

Exhibit #31

ORIGINAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
RECEIVED AND FILED
IN OPEN COURT

OCT - 9 2020

KITSAP COUNTY CLERK
ALISON H. SONNTAG

The Honorable Sally Olsen
Hearing Date: October 9, 2020
Hearing Time: 1:30 PM

16-2-02165-6
FNFCL 80
Findings of Fact and Conclusions of Law
9068762



SUPERIOR COURT OF WASHINGTON FOR KITSAP COUNTY

MATTHEW BECKER, a Washington resident; LAUREN KUEHNE, a Washington resident; ADAM CRISWELL, a Washington resident; KRYSTAL CRISWELL, a Washington resident; ALFEE DIXON, a Washington resident; TYSON FARLEY, a Washington resident; DONALD FINISTER SR., a Washington resident; CHRISTOPHER HART, a Washington resident; JASON KOVACK, a Washington resident; RICKY LORENSIUS, a Washington resident; HEATHER MAREK, a Washington resident; MICHAEL MARTIN, a Washington resident; DAISEY MARTINEAR, a Washington resident; GRACE MATEIAK, a Washington resident; IAN MATEIAK, a Washington resident; JOHN MELOPRIETO, a Washington resident; TRAVIS NEUMAN, a Washington resident; ARIEL NEUMAN, a Washington resident; MICHELLE PAULINO, a Washington resident; JOHN PAULINO, a Washington resident; JAMES RAMPONI, a Washington resident; LINDSEY RAMPONI, a Washington resident; ERIC MCCANDLESS, a Washington resident; PAIGE ROE, a Washington resident; PAUL ROHRER, a Washington resident; ANDREW SICAT, a Washington resident; NICOYA MCKINSEY, a Washington resident; JEREMY SIERRA, a Washington resident; ERICA SIERRA, a Washington resident; DARIUS USMAN, a Washington resident; KRISTEN ZABAGLO, a Washington resident; DAVID WILSON, a

NO. 16-2-02165-6

**PLAINTIFFS AS ASSIGNEES OF
HIGHMARK HOMES LLC'S
FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

1 Washington resident; IAN LAUGHLIN, a
2 Washington resident; SHELLY LAUGHLIN, a
3 Washington resident; TAMMARA BOYLES, a
4 Washington resident; and BOBBY BOYLES, a
5 Washington resident; LAIN SUPE, a
6 Washington resident; TIM WRIGLEY, a
7 Washington resident; BILLY LUNSFORD, a
8 Washington resident; ROBIN LUNSFORD, a
9 Washington resident; CAMERON
FLEWELLEN, a Washington resident;
CHELSEA FLEWELLEN, a Washington
resident; MOHAMMAD SIDDIQUE, a
Washington resident; AMY HO, a Washington
resident; MATTHEW GROFF, a Washington
resident;

10 Plaintiffs,
vs.

11 HIGHMARK HOMES, L.L.C., a Washington
12 Company; TOM TOLLEN, an individual;
Washington resident; JOHN DOE
13 COMPANIES and/or CORPORATIONS,
Washington Companies,

14 Defendant s.

15 HIGHMARK HOMES LLC, a Washington
16 Company; TOM TOLLEN, an individual;

17 Defendant s/Third-Party
18 Plaintiffs;

19 Vs.

20 ABSI BUILDERS INC., a Washington
corporation; DURKIN CONSTRUCTION &
21 REMODELING INC., a Washington
corporation; ERIK CONSTRUCTION, a
22 Washington sole proprietorship; FILI AND
SONS CONSTRUCTION INC., a Washington
corporation; IGS CONSULTING, L.L.C., a
23 Washington limited liability company; RDE
CONSTRUCTION INC., a Washington

1 corporation; SIMONSON CONSTRUCTION,
2 a Washington Sole proprietorship; VAB
3 QUALITY WORKS, a Washington limited
liability company; A.M.E.R.I.C.A. 1ST
4 ROOFING & BUILDERS INC., a Washington
corporation,

5 Third-Party Defendant s.

6 **I. INTRODUCTION**

7 THIS MATTER having come on for hearing before the above-entitled Court, upon the
8 plaintiffs' motion for a determination of reasonableness and the Court relying on the following
9 documents.

10

- 11 • Plaintiffs' Motion to Determination Reasonableness of Settlement;
- 12 • Declaration of Martin Flores and attached exhibits;
- 13 • Declaration of Robb Dibble and attached exhibits;
- 14 • Declaration of Brian Johnson and attached exhibits;
- 15 • Declaration of Tom Jones and attached exhibits;
- 16 • Declaration of Todd Skoglund and attached exhibits; and
- 17 • All case files on record with the clerk including pleadings, motions, declarations,
exhibits, and other materials.

18 **II. FINDINGS OF FACT**

19 The Court finds the following facts to be accurate and correct.

20 1. This is a construction defect case arising out of the construction of the East Park
21 housing development located in Kitsap County, Washington (*after this "Project."*)

22 2. The plaintiffs are homeowners who purchased their homes from Highmark
23 Homes, L.L.C. (*after this "Highmark"*), the developer, and general contractor on the project.

24 3. Highmark intended all of the work on the project be completed per the Residential
25 Building Code, the International Building Code, manufacturers' requirements, and the plans and

1 specifications it submitted to the County.

2 4. On or about November 28, 2016, the plaintiffs filed a lawsuit against Highmark
 3 and others for breach of contract, breach of express warranty, breach of an implied warranty, and
 4 for the cost to repair damage caused by its work and other losses caused by its work. Highmark
 5 denied the allegations made by Plaintiffs and, in turn, filed a third-party complaint against multiple
 6 contractors alleging they had a contractual obligation to perform labor and utilize materials in
 7 compliance with the Residential Building Code (*from now on* "R.B.C."), the International Building
 8 Code (from now on "I.B.C.") manufacturers' requirements, and the plans and specifications. The
 9 Plaintiffs alleged there were construction defects which were resulting in property damage.

10 5. Plaintiffs retained several construction professionals: Martin Flores of
 11 Dimensional Building Consultants as to exterior envelope issues, Rob Dibble of Dibble
 12 Engineers to review the structural components of the Project, Tom Jones of Zipper Geo
 13 Associates to investigate the drainage and other geological problems, and Brian Johnson of
 14 Charter Construction as to the cost of repairs. The Court finds plaintiffs' experts conducted
 15 thorough investigations and, with experience with Highmark Homes, had ample knowledge to
 16 testify in this matter and are qualified as experts.

17 6. The Plaintiff's experts found violations of R.B.C., I.B.C., manufacturers'
 18 requirements, and the plans and specifications it submitted to the County and property damage to
 19 each of the Plaintiff's houses.

20 7. On or about April 19, 2019, the Plaintiffs and Highmark entered into a settlement
 21 that contained a covenant judgment. In exchange for a covenant not to execute, Highmark
 22 stipulated to entry of a judgment in the amount of \$2,569,072 and assigned the Plaintiffs all
 23 right and title to any claims it has against its contractors, the contractor's insurance carrier(s),
 24 and Highmark's insurance carrier(s.) As part of the settlement terms, Highmark demanded the
 25 plaintiffs take an 11.5% reduction in their damages due to risks of litigation and other factors.

1 8. The amount of the judgment against Highmark was calculated as follows: adding
 2 the cost to repair homes: \$1,839,585 to Litigation costs: \$47,304 and then finally adding the
 3 Attorney fees owed: \$1,016,017 for a subtotal of \$2,902,906. Then the reduction of 11.5% was
 4 taken for a total amount of damages of \$2,569,072.

5 9. However, there was a scrivener error in the settlement agreement relating to
 6 repair costs for the Highmark work and related property damage. The true cost of repair for the
 7 siding, drainage, and related property damage was \$2,190,845. (*Decl. of Johnson ¶ 4 Ex 4.*) As
 8 discussed below, the Court finds this amount reasonable due to the expert testimony and is
 9 allowed to alter the judgment under Washington law. *See* RCW 4.22.060 (3); and see Owners
 10 Assn v. Meadow Valley, L.L.C., 137 Wn. App. 810, 820, 156 P.3d 240 (2007), citing Howard
 11 v. Royal Specialty Underwriting, Inc., 121 Wn. App. 372, 376-77, 89 P.3d 265 (2004.)

12 10. After settling, the Plaintiffs, as assignees of Highmark, started negotiating with
 13 the contractors who performed work on the project, and various insurance carriers. Although
 14 the Plaintiffs were able to settle with Erik, other insurance carriers refused to defend and
 15 indemnify Erik or Highmark via Highmark's additional insured status.

16 11. In October/November of 2019, the Plaintiffs settled with Erik. Erik stipulated
 17 to entry a judgment for \$2,672,418 and assigned the Plaintiffs all rights and title to any claims
 18 it has against its insurance carriers and agreed to take a 20% reduction in its alleged damages.

19 12. The settlement was calculated by adding the construction cost to repair homes
 20 \$2,190,845 to the litigation costs: \$47,304 and then adding the attorney fees owed: \$1,102,374
 21 for a subtotal \$3,340,523. Then a reduction of 20% was taken, leaving the final damage amount
 22 of \$2,672,418.

23 13. The real cost to repair Erik's work, the siding, related components, and property
 24 damage, is \$1,861,534.00. (*Decl. of Johnson ¶ 5 Ex 5.*) The \$2,190,845.00 Charter bid has
 25 monies in it for drainage, which it was determined Erik did not do. (*Decl. of Johnson ¶ 4 Ex 4.*)

III. APPLICABLE LAW APPLIED BY THE COURT

14. The Court relies on all the facts set forth above, as if fully stated herein.

15. Washington courts have "adopted the reasonableness factors in the context of RCW 4.22.040, which governs the availability of contribution to a tort-feasor who enters into a settlement with a claimant." Red Oaks Condo. Owners Ass'n v. Sundquist Holdings, Inc., 128 Wash. App. 317, 325–26, 116 P.3d 404, 408–09 (2005) citing Glover, 98 Wash.2d at 716–718, 658 P.2d 1230 (It is well established that such settlements are permissible under Washington law.) See generally *736 **1236 Safeco Ins. Co. of Am. v. Butler, 118 Wash.2d 383, 823 P.2d 499 (1992.)

16. When the trial Court reviews and considers the reasonableness of a settlement, it must do so under the light of when the parties enter it. Bird v. Best Plumbing Grp., L.L.C., 161 Wash. App. 510, 523–24, 260 P.3d 209, 216 (2011), *aff'd*, 175 Wash. 2d 756, 287 P.3d 551 (2012) citing Brewer v. Fibreboard Corp., 127 Wash.2d 512, 541, 901 P.2d 297 (1995) (emphasis omitted); Mavroudis v. Pittsburgh–Corning Corp., 86 Wash. App. 22, 38, 935 P.2d 684 (1997.) The burden of proving a settlement reasonable is on the party requesting the settlement be determined reasonable by the Court, and the Court should consider the following: "The releasing person's damages; the merits of the releasing person's liability theory; the merits of the released person's defense theory; the released person's relative fault; the risks and expenses of continued litigation; the released person's ability to pay; any evidence of bad faith, collusion, or fraud; the extent releasing person's investigation of the case; and the interest of the parties not released" Chause v. Maryland Cas. Co., 60 Wash.App 504., 512, 803 P.2d 1339 (1991) (Quoting Glover v. Tacoma Gen. Hosp., 98 Wash.2d 708, 717, 658 P.2d 1230 (1983).)

1 17. Washington courts have reasoned that no single factor controls the analysis, and
 2 all the factors are not necessarily present or relevant in all cases. R.S.U.I. Indem. Co. v. Vision
 3 One, L.L.C., 165 Wash. App. 1020 (2011), as amended on denial of reconsideration (February
 4 28, 2012), citing Besel v. Viking Ins. Co., 146 Wash.2d 730, 739 n. 2, 49 P.3d 887 (2002).
 5 Although the burden is on the settling parties to establish reasonableness, it is incumbent on any
 6 party with an interest or liability arising from the judgment to present evidence, if able, to
 7 contradict the settling parties' evidence. Pickett v. Stephens-Nelsen, Inc., 43 Wash. App. 326,
 8 332–33, 717 P.2d 277 (1986.) The Court did look at all the elements and apply those it believed
 9 applicable.

10 18. Under Washington, Law covenant judgments are valid and binding agreements.
 11 See Besel v. Viking Ins. Co., 146 Wn.2d 730, 49 P.3d 887 (2002) quoting Safeco Insurance Co.
 12 of Am. v. Butler, 118 Wn.2d 383, 399, 823 P.2d 499 (1992). ("A covenant not to execute
 13 coupled with an assignment and settlement agreement ... is 'an agreement to seek recovery only
 14 from a specific asset – the proceeds of the insurance policy and the rights owned by the insurer
 15 to the insured.'"); and See Mut. of Enumclaw Ins. Co. v. U.S.F. Ins. Co., 164 Wash.2d 411, 425-
 16 26, 191 P.3d 866 (2008) ("To deprive the assignees of the full use of assigned rights would be
 17 to deprive insureds/assignors of a valuable bargaining tool in settlement agreements.")

18 19. The general measure of damages for breach of contract is that the injured party
 19 is entitled to (1) recover all damages that accrue naturally from the breaches, and (2) be put into
 20 as good a pecuniary position as he would have been in if the contract were performed. Eastlake
 21 Constr. Co. v. Hess, 102 Wash.2d 30, 39, 686 P.2d 465 (1984.) Again, the amount of the
 22 covenant judgment was calculated by reducing the gross damages to the Plaintiffs, which falls
 23
 24

1 in line with awarding the Plaintiffs an amount that puts them back into the position they would
 2 have been in if Highmark performed as promised. All of Plaintiff's experts concluded there were
 3 many portions of the project which were not in compliance with the R.B.C., I.B.C., the plans, and
 4 specifications, and there was property damage all over the site.

5 20. The contracts between the plaintiffs and Highmark and plaintiffs C.P.A. claims
 6 both provided for attorney fees, so an award of fees is appropriate.

7 21. An award that takes into consideration the Plaintiffs' Contingent Fee Agreement
 8 is entirely consistent with Washington law, as the Court recognized in Allard v. First Interstate
 9 Bank of Washington, 112 Wn. 2d 145, 150, 768 P.2d 998, 773 P.2d 420 (1989), a court asked
 10 to determine an award of reasonable attorney fees may consider a contingent fee agreement.
 11 Understandably, Allard also ruled that a court may not rely exclusively on the terms of a
 12 contingent fee agreement but must instead independently decide what constitutes a reasonable
 13 fee award. Allard, 112 Wn.2d at 150-51.

15 1. The time and labor required, the novelty and difficulty of the questions involved,
 16 and the skill required to perform the legal service properly.
 17 2. If apparent to the client, the likelihood that the acceptance of the employment
 18 will preclude other employment by the lawyer.
 19 3. The fee customarily charged in the locality for similar legal services.
 20 4. The amount involved and the results obtained.
 21 5. The time limitations imposed by the client or by the circumstances.
 22 6. The nature and length of the professional relationship with the client.
 23 7. The experience, reputation, and ability of the lawyer or lawyers performing the
 24 services; and
 25 8. Whether the fee is fixed or contingent.

Allard, 112 Wn.2d at 149-150.

22 22. A trial Court may adjust a settlement and related judgment up or down depending
 23 on the facts presented at the reasonableness hearing. See RCW 4.22.060 (3); see Owners Assn

1 v. Meadow Valley, L.L.C., 137 Wn. App. 810, 820, 156 P.3d 240 (2007), citing Howard v.
 2 Royal Specialty Underwriting, Inc., 121 Wn. App. 372, 376-77, 89 P.3d 265 (2004.)

3 A party is entitled to prejudgment and post-judgment interest on settlement agreements.
 4 It is widely acknowledged in Washington that “a settlement made in an underlying civil action
 5 represents a liquidated amount and an award of prejudgment interest is appropriate.” P.U.D.
 6 No. 1 of Klickitat County v. Int’l Ins., 124 Wn.2d 789, 811, 881 P.2d 1020 (1994); King County
 7 v. Puget Power, 70 Wn.App. 58, 62, 852 P.2d. 313 (1993) King County v. Puget Power, 70
 8 Wn.App. At 62.

9

**IV. THE COURTS CONCLUSIONS RELATING TO THE PLAINTIFFS AND
 HIGHMARK SETTLEMENT**

10 The Court has considered the above facts finds as a matter of law as follows:

11 22. The Court relies on all the facts outlined above as if fully stated herein.

12 23. The settlement was necessitated by the fact Highmark knew it would lose a
 13 motion for summary judgment, as it had already lost the same motion in another matter when
 14 the trial court ruled as a matter of law the defects identified at the project were violations of the
 15 applicable building codes and the plans and specifications. Highmark was also forced to settle
 16 as some of its insurance carriers refused to fulfill its contractual obligations to defend and
 17 indemnify it and multiple subcontracts insurance carriers refused to fulfill their obligations
 18 under the additional insured endorsements.

19 24. The Court finds Highmark’s exposure to damages were significant. The
 20 Plaintiff’s experts found violations of R.B.C., the I.B.C., manufacturers’ requirements, and the
 21 plans and specifications it submitted to the County and property damage to the houses. The Court
 22 finds Charter Construction’s Cost of repair of \$2,190,845.00 to repair the defects and property
 23 damage reasonable and fair considering all the supporting evidence.

24 25. The Court finds plaintiffs cost incurred litigating this matter of \$47,304 are

1 recoverable under the contract law, and necessary and reasonable considering all the facts of
2 the case.

3 26. Casey & Skoglund P.L.L.C. (*after* this " C& S.") was retained to represent the
4 Plaintiff's interests on a contingency fee contract. The Court agrees and understands the
5 plaintiffs, as many plaintiffs, were not in a financial position to pay C & S an hourly rate due
6 which would have been due at the end of each month.

7 27. The Court realizes this case involved complex issues, and evidence available and
8 presented suggests that construction defect cases are costly to litigate compared to the recovery
9 in many cases. Additionally, the contingent nature of the fee agreement made the risks of taking
10 on this case by Plaintiffs' counsel significant, in that there was a likelihood that Plaintiffs'
11 counsel might not earn anything (or very little) for the work performed and might not recoup
12 the costs that he had advanced or was responsible for.

13 28. The Court finds the time and difficulty spent by C & S in this matter were
14 significant as Highmark had been sued by a previous client of plaintiffs' counsel for construction
15 defects. In that matter and Highmark kept sloppy records and lost all types of documents, i.e.,
16 plans, specifications, certificates of occupancy, inspector check-offs, contracts, invoices, Etc.
17 Without the documents, Plaintiffs knew they had to rely on what Highmark had not lost, and
18 the testimony of Mr. Tollen. The evidence presented outlined novel and complicated legal and
19 factual issues that required significant skill on the Plaintiff's counsel.

20 29. C & S may have lost some work as this case, and other Highmark cases took up
21 of time.

22 30. The contingent fee agreement is customary in construction defect cases and, in
23 fact it is difficult for some owners to find lawyers because attorneys deem the risks too
24 significant in these cases, and their ability to recover their complete contingent fee uncertain.

1 31. The effort to force Highmark into a settlement and acknowledge its faults was
2 significant. The time limitations imposed by the prosecution of this matter, as well as the
3 experience, reputation, and ability of the Plaintiffs' counsel.

4 32. The contingent nature of the fee and the risks of litigation, in this case, were
5 substantial weight in determining the amount of the fees to award in this case. The Court
6 reviewed the time submitted and it finds the hours reasonable and necessary for the work
7 performed.

8 33. Plaintiffs are entitled to twelve percent (12%) interest on their settlement with
9 Highmark from the date of Highmark's signature, April 19, 2019, at a rate of \$947 per day until
10 the hearing on this motion, and continuing until the judgment is paid in full.

11 34. Plaintiffs are entitled to twelve percent (12%) interest on their settlement with
12 Erik as assignees of Highmark's claims against Erik, from the date of counsels' signature,
13 November 15, 2019, at a rate of \$792 per day until the hearing on this motion, and continuing
14 until the judgment is paid.

15 35. The Court did consider and weigh every Glover factor to the facts in this matter.

16 36. All parties' interest appears to be represented or at least notified as all the
17 contractors who have not settled, and all known insurance carriers appear to have been notified.

18 37. The Court finds merit of the plaintiffs' claims, and it finds plaintiffs had valid
19 breach of contract and consumer protection claims, which they most likely prevailed at trial.

20 38. The Court finds the continuation of this matter would have caused unnecessary
21 risks and additional costs, which this settlement eliminated by the settlement. Due to
22 Highmark's past projects and liabilities, the company and personal liability could have been
23 significantly more. A trial would have been costly, but the exposure could have been enormous
24 to personal or other companies' liability. By entering into the covenant judgment, the Plaintiffs
25

1 and Highmark were able to eliminate the risk of trial, reach finality, and not waste any resources
2 on a conclusion both parties knew were inevitable.

3 39. Highmark may have some ability to pay part of a judgment, but the Court finds
4 it not material to this matter when it faced significant risks to its assets and future if it was forced
5 to pay a large judgment.

6 40. There has been no evidence presented to the Court indicating any bad faith,
7 collusion, or fraud in the settlement between plaintiffs and Highmark.

8 41. The Court considers and believes Highmark's demand and pushing of plaintiffs
9 to take a reduction of 11.5% in damages tends to show there was no bad faith, collusion, or
10 fraud, and an example of this settlement being an arm lengths transaction with bad faith or
collusion.

11 42. After considering all the facts, applicable law, including the Glover factors, the
12 Court rules as follows regarding Highmark:

13 a. The plaintiff cost of repair of \$2,190,845 is reasonable and recoverable under
14 Washington law

15 b. The litigation costs and expenses of \$47,304 are reasonable and recoverable
16 under Washington law.

17 c. The Court finds the number of fees in the settlement unreasonable. The Court
18 finds an award of 33% considering all the Allard factors excessive, but a
19 multiplier of two is appropriate considering all the facts. The Court finds an
20 award of \$487,928.00 is reasonable and recoverable under Washington law to
21 be a reasonable considering all the Allard factors and facts in this matter.

22 56. The court finds a settlement and judgment of \$2,412,577 reasonable considering
23 all the facts and law applicable to this matter.

1 54. Finally, the Court believes the settlement to be liquid, and thus, plaintiffs are
 2 entitled to 12% interest from the date of the settlement on April 19, 2019, to the date this order
 3 is entered at \$793 a day per day (539 days on Oct. 9) for a total of \$427,427.

4

5 **V. THE COURTS CONCLUSIONS RELATING TO THE PLAINTIFFS AS**
 6 **ASSIGNEES OF HIGHMARK AND ERIK SETTLEMENT**

7 43. The Court relies on all the facts set forth above, as if fully stated herein.

8 44. Once Highmark Settled with the plaintiffs, Erik was forced to settle as its
 9 insurance carriers were not all stepping up and agreeing to defend and indemnify them.

10 45. In October/November of 2019, the Plaintiffs settled with Erik. Erik stipulated to
 11 entry of judgment and assigned the Plaintiffs all rights and title to any claims it has against its
 12 insurance carriers and agreed to take a 20% reduction in its alleged damages (*Id.*)

13 46. Highmark's indemnity claim against Erik was strong, and they most likely would
 14 have prevailed at trial against Erik due to the indemnity language in the party's contract. The
 15 contract reading,

16 The obligation of indemnity in this agreement shall survive the termination of this
 17 agreement and includes explicitly Service Provider's duty as indemnitor to hold harmless
 18 and defend the Indemnities' for any and all such loss following completion...

19 47. The Plaintiffs retained multiple experts to inspect the project, and they
 20 determined the labor performed. Materials used by Erik were not completed in compliance with
 21 the R.B.C., I.B.C., and the plans and specifications, and as a result, each home on the project
 22 suffered property damage. The allegations and testimony proved the allegations and property
 23 damaged stemmed from Erik's activities on the project. The Court finds Highmark would have

1 most likely been found liable to plaintiffs triggering Erik's indemnity obligations per its
 2 contracts.

3 48. Erik did not have any contractual or defenses to Highmark's indemnity or breach
 4 of claims. Plus, as stated above, under the indemnity agreement, all which needed to be proven
 5 was that Erik installed the siding, and Highmark was found liable due to Erik's work.

6 49. The indemnity paragraph is enforceable. Continuing litigation solved no purpose
 7 other than to waste time, resources, and place the companies and possible its member's personal
 8 assets at risk. In the end, the parties could have litigated to the verdict, but there was no real
 9 dispute on the scope of repair or damages, but rather the only issue is where and how the
 10 judgment would get paid. This is settlement allows the Plaintiffs to get one step closer to that
 11 decision.

13 50. The Court reviewed the record. All the evidence presented evidence and see no
 14 evidence of bad faith, collusion, or fraud, by Plaintiffs, as they agreed to a reduction of 20% in
 15 damages as there are always risks in jury trials. Also, a decrease of 20% percent by Plaintiffs
 16 makes the covenant judgment *prima facie* reasonable. See, e.g., Heights, 145 Wash.App. at 706-
 17 7 (The Court found a reduction of seventeen and one-half percent in damages compelling
 18 evidence the covenant judgment was reasonable and not a product of bad faith, collusion, or
 19 fraud.) Heights at Issaquah Ridge 308.

20 51. In addition to the construction costs, fees and expenses, the Plaintiffs also seek
 21 prejudgment interest at 12% per annum from the date of the settlement between Plaintiffs and
 22 Highmark (on or about April 19, 2019) and between Plaintiffs as assignees of Highmark and
 23 Erik (on or about November 15, 2019.)

1 52. Plaintiffs are entitled to prejudgment interest on their settlement with Highmark
 2 and their settlement with Erik as assignees of Highmark's claims against Erik. It is widely
 3 acknowledged in Washington that "a settlement made in an underlying civil action represents a
 4 liquidated amount and an award of prejudgment interest is appropriate." P.U.D. No. 1 of
 5 Klickitat County v. Int'l Ins., 124 Wn.2d 789, 811, 881 P.2d 1020 (1994); King County v. Puget
 6 Power, 70 Wn. App. 58, 62, 852 P.2d. 313 (1993); and King County v. Puget Power, 70 Wn.
 7 App. At 62.

8 53. The Court considers and believes Highmark's demand and pushing of plaintiffs
 9 to take a reduction of 20% in damages tends to show there was no bad faith, collusion, or fraud,
 10 and an example of this settlement being an arm lengths transaction with bad faith or collusion.

12 54. After considering all the facts, applicable law, including the Glover factors, the
 13 Court rules as follows regarding Erik:

- 14 a. The Plaintiffs costs of repair of \$1,861,531
- 15 b. The litigation costs of \$47,304, are reasonable.
- 16 c. The Court finds an award of \$487,928, the same fees under the Highmark
 17 settlement, under the settlement reasonable under the indemnity obligation.

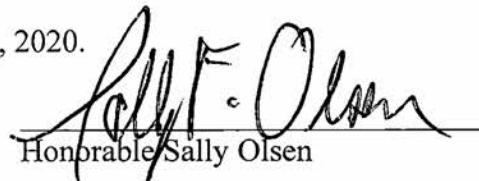
18 56. The court finds a settlement and judgment of \$1,917,413 reasonable considering
 19 all the facts and law applicable to this matter.

20 54. Finally, the Court believes the settlement to be liquid, and thus, plaintiffs are
 21 entitled to 12% interest from the date of the settlement on November 15, 2019, to the date this
 22 order is entered at \$630 per day (328 days on Oct. 9) for a total of \$206,640.

23 NOW, THEREFORE, it is hereby ORDERED that Plaintiff's Reasonableness Motion
 24 re Highmark is GRANTED and the Court finds a covenant judgment of \$2,840,004 to be
 25 reasonable.

1 It is hereby further ORDERED that Plaintiff's Reasonableness Motion as assignees
2 Highmark against Erik is GRANTED and the Court finds a covenant judgment of \$2,124,053
3 to be reasonable.

4 DATED this 9 day of October 20, 2020.

5 
6 Honorable Sally Olsen

7 RESPECTFULLY SUBMITTED this 30th day of September 2020.
8

9 SKOGLUND LAW LLC

10 By: 
11 Todd K. Skoglund, W.S.B.A. #30403
12 Attorney for Plaintiff